

Article - Public Utilities

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§20–205.

(a) (1) A certifying agency shall determine bona fide minority group membership based on an individual's claim that the individual is:

- (i) a member of a minority group; and
- (ii) regarded as a member by that minority community.

(2) A certifying agency may determine that an individual's claim under this subsection is invalid.

(b) (1) To be eligible for certification as a minority business enterprise and participation in a minority business enterprise utilization program under § 20–203 or § 20–204 of this subtitle, a business shall meet the standards under this subsection.

(2) (i) A minority business enterprise shall be an independent business.

(ii) A certifying agency shall determine whether a business is independent by considering:

- 1. the date the business was established;
- 2. the adequacy of the resources of the business for the work required under the contract;
- 3. the degree to which financial, equipment leasing, and other relationships with nonminority businesses vary from industry practice; and
- 4. any other relevant factor.

(3) A minority owner shall have real, substantial, and continuing ownership and control of the business that goes beyond the pro forma ownership of the business as reflected in the ownership documents.

(4) A minority owner shall have the customary incidents of ownership and share in the risks and profits commensurate with the ownership

interests in the business as demonstrated by an examination of the substance rather than the form of the arrangements.

(5) Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for certification as a minority business enterprise.

(6) (i) A minority owner shall have the power to:

1. direct or cause the direction of the management and policies of the business; and

2. make the day-to-day and major decisions on matters of management, policy, and operations for the business.

(ii) The business may not be subject to a formal or informal restriction, including a bylaw, partnership agreement, or charter requirement for cumulative voting rights, that prevents a minority owner from making a business decision without the cooperation or vote of an owner who is not a minority.

(7) (i) The business may not be operated disproportionately by the owners of the business who are not minorities.

(ii) If the management of the business is contracted out to an individual other than the owner, the individual who has the ultimate power to hire and fire the managers may be considered as controlling the business.

(8) (i) Minorities shall directly hold all securities that constitute ownership or control of a corporation for the purpose of establishing the corporation as a minority business enterprise.

(ii) Securities held in trust or by a guardian for a minor may not be considered held by minorities in determining the ownership or control of a corporation.

(9) A contribution of capital or expertise by a minority owner to acquire an interest in a business shall be real and substantial and may not include:

(i) a promise to contribute capital;

(ii) a note payable to the business or owners of the business who are not socially and economically disadvantaged; or

(iii) participation as an employee and not as a manager.

(c) In determining eligibility as a minority business enterprise, a certifying agency shall:

(1) closely scrutinize a newly formed business, or a business for which the ownership or control has changed since the date of the advertisement of the contract, to determine the reason for the timing of the formation or change;

(2) carefully review a previous or continuing employer–employee relationship among present owners to ensure that an employee–owner has the management responsibilities and capabilities required under this section; and

(3) carefully review a relationship between a minority business enterprise and a business that is not a minority business enterprise that has an interest in the minority business enterprise to determine if the interest of the nonminority business conflicts with the ownership and control requirements of this section.

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